Penal Code. That matter too has to be raised before the learned Magistrate and not in a petition like the present one.

8. For the foregoing reasons, there is no merit in the petition which is hereby dismissed. Criminal Misc. No. 2666 of 1983 for production of documents stands disposed of by this order.

9. The parties through their counsel are directed to put in appearance before the learned Magistrate on the 29th July, 1983.

H.S.B.

Before D. S. Tewatia, J.

UNION OF INDIA,—*Petitioner*

versus

THE PRESIDING OFFICER AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 7897 *of* 1976.

July 22, 1983.

Industrial Disputes Act (XIV of 1947)—Section 2(j)—Post and Telegraph Department of the Government of India—Whether can be termed an industry under the Act—Employees of the Department—Whether can be termed as workmen.

Held, that activities handled by the Post and Telegraph Department, historically speaking have been handled by the State in this country. Having regard to the importance of the communication to the successful coordination of the sovereign and regal functions of the State like defence of the country, maintenance of law and order etc., there is no escape from the conclusion that the activity carried on by the Post and Telegraph Department has as its dominant purpose the performance of sovereign and regal functions of the State. The ancillary activity of receiving deposit under various savings schemes, maintenance of accounts etc. is a very minor part of the activity of the department and by no stretch of reasoning could it be considered to be the dominant purpose behind the establishment of the department of Post and Telegraph. What is more, this activity is not severable from the dominant activity of the department in that the very man who is handling telegrams etc. is also at the same time receiving the deposits and maintaining the account. That person

cannot at the same time be both i.e., 'a workman' as also 'a Civil Servant'. As such the Post and Telegraph Department is not an 'industry' as defined in section 2(j) of the Industrial Disputes Act, 1947 and the employees thereof are not 'workmen'.

(Paras 7 and 8).

Petition under Articles 226/227 of the Constitution of India praying that :—

(*i*) *the order of the learned Labour Court Annexure P-3, be quashed by issuing a writ in the nature of* certiorari.

(*ii*) *any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued.*

(*iii*) *the record of the case be ordered to be sent for.*

(*iv*) *the cost of the petition be awarded in favour of the petitioner.*

It is further prayed that during the pendency of the writ petition further proceedings before the Labour Court be stayed.

H. S. Brar, Advocate *for the Petitioner.*

M. S. Bedi, Advocate *for the Respondents.*

JUDGMENT

D. S. Tewatia, J.

1. In this petition the Union of India (hereinafter referred to as the petitioner) has impugned the adverse award rendered by the Labour Court, Jullundur, dated 12th August, 1976 on the preliminary objection raised before it by the petitioner to the effect that the application of respondent No. 2, Shri Sohan Singh Bhatti invoking the jurisdiction of the Labour Court under section 33(C) (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was not maintainable as the Post and Telegraph Department, in which he was employed as a Clerk could not be termed an 'industry' as defined in the Act and respondent No. 2 could not be treated as 'workman'.

2. The Labour Court after liberally quoting from the decisions of the Supreme Court in *Workmen, I. S. Institution* v. *I. S. Institution* (1) and *Madras Gym. Club Employees' Union* v. *Management* (2), held the Post and Telegraph Department to be falling within the definition of 'industry' as defined under the Act.

(1) AIR 1976 S.C. 145.
(2) AIR 1968 S.C. 554.

3. What constitutes an 'industry' is an area, the twilight part whereof is covered by plethora of decided cases both of the High Courts and of the apex Court. In regard to the border line matters, every new decided case instead of showing any light has, in fact, added to the confusion more so, if the Court opted to widen the beneficial sweep of the expression 'industry'.

Their Lordship in, what can be termed as the ultimate dictum on the point, *Bangalore Water Supply* v. *A. Rajappa* (3) sought to clearly delineate the scope of expression 'industry' and in the process over-ruled some of their own earlier judgments as well as those of the High Courts. The endeavour was justified but with what success it is difficult to say. Two of the Judges who had rendered their opinion later had invoked the legislative interference to clear the confusion and set the matter right. So, it is not surprising that the discerning of the ratio of the judgment itself posed problem to the Courts and one of the matters here concerning P.W.D. (B&R) department required the intervention of a Full Bench in *State of Punjab* v. *Shri Kuldip Singh* (4) to identify the true ratio of *Bangalore Water Supply's case* (supra) and apply the same to the facts before it. I would, therefore, profit by the spade work done by the Full Bench in this regard, rather than take upon myself to analyse afresh the ratio of that case.

4. Sandhawalia, C.J., who delivered the opinion for the Bench in the light of the ratio of the Supreme Court judgments divided the governmental activity in following four categories :—

(1) The sovereign or the regal functions of the State which are the primary and inalienable rights of a constitutional Government.

(2) Economic adventures clearly partaking of the nature of trade and business undertaken by it as part of its welfare activities.

(3) Organised activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business.

(4) The residuary organized governmental activity which may not come within the ambit of the aforesaid three categories."

(3) AIR 1978 S.C. 548.

(4) 1983 Lab. I.C. 83.

5. The Bench found that the first category as also the fourth category is out of bounds of the Act. To the second category the Act was undoubtedly held applicable and category third is held to be constituting although a border line category but the provisions of the Act were held to cover this category also.

6. The Full Bench applied two tests in order to judge whether a given governmental activity fell in the first, fourth or the third category. First test was to see as to what was the dominant purpose of the Governmental activity. If the dominant purpose was one which could be considered to carry on activity which is analogous to 'trade' and 'business', then it would fall in category 3. But if the dominant purpose was to carry on the sovereign or regal functions along with — a minor activity which could be considered to be analogous to carrying on 'business' or 'trade' and that minor activity was not severable from the dominant activity, then the given Governmental activity would fall in first category.

7. Activities handled by Post and Telegraph Department, historically speaking have been handled by the State in this Country. Having regard to the importance of the communication to the successful coordination of the sovereign and regal functions of the State like defence of the country, maintenance of law and order etc., there is escape from the conclusion that the activity carried on by the Post and Telegraph Department falls within the first category, for the organisation of the Post and Telegraph Department has as its dominant purpose the performance of sovereign and regal functions of the State. The ancillary activity of receiving deposit under various savings schemes, maintenance of accounts etc. is a very minor part of the activity of the department and by no stretch of reasoning could it be considered to be the dominant purpose behind the establishment of the department of Post and Telegraph. What is more, this activity is not severable from the dominant activity of the department in that the very man who is handling telegrams etc. is also at the same time receiving the deposits and maintaining the account. That person cannot at the same time be both, i.e., 'a workman' as also 'a Civil Servant.'

8. For the reasons aforementioned I hold that the Post and Telegraph Department is not an 'industry' and employees thereof are not 'workmen'. Therefore, the application of respondent No. 2,

before the Labour Court was clearly untenable and the Labour Court had no jurisdiction in the matter.

9. In view of the above, I quash the impugned award and allow the petition with no order as to costs.

H. S. B.

Before S. S. Sandhawalia, C.J. and I. S. Tiwana, J.

N. C. MAHENDRA,—*Petitioner*

versus

THE HARYANA STATE ELECTRICITY BOARD AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4088 *of* 1978.

May 9, 1983.

Constitution of India 1950—*Articles* 226 *and* 227—*Code of Civil Procedure* (*V of* 1908)—*Order* 41—*Writ Jurisdiction—Exercise of—Whether appellate in nature—Writ Petition—Admission of—Whether could be limited to a particular question.*

Held, that the writ jurisdiction is not *stricto sensu* appellate in nature. It needs no great erudition to see that a number of well-known writs are not even remotely appellate in essence. The celebrated writ of habeas corpus, for instance may not be directed against any specific order at all and may claim relief only against the fact of unauthorised detention. Similarly, the writs of prohibition and *quo warranto* may equally be not invariably directed against any judicial or quasi-judicial order as such. The position is analogous if not identical in the case of a writ of *mandamus* as well. Even in the case of a writ of *certiorari*, it cannot be said inflexibly that it partakes the nature of an appeal. In fact, the law on the point is hallowed with the reiteration of the principle that the writ jurisdiction is not an appellate jurisdiction.

(Para 6).

Held, that Order 41 of the Code of Civil Procedure 1908 as its very heading indicates, pertains to appeals from original decrees. Without doing violence to the language, one cannot easily imagine a writ petition as being an appeal from an original decree. Consequently the provisions of this order *prima*